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HOUSE BILL 263

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY
MIGUEL P. GARCIA

AN ACT

RELATING TO ALCOHOLIC BEVERAGES; CLARIFYING AND EXPANDING THE
GROUNDS FOR DENYING AN APPLICATION FOR A LICENSE AND FOR
REVOCATION OR SUSPENSION OF A LICENSE PURSUANT TO THE LIQUOR
CONTROL ACT; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 60-6B-2 NMSA 1978 (being Laws 1981,
Chapter 39, Section 38, as amended) is amended to read:

"60-6B-2. APPLICATIONS. --

A. Before any new license authorized by the Liquor
Control Act may be issued by the director, the applicant for the
license shall:

(1) submit to the director a written
application for the license under oath, in the form prescribed
by and stating the information required by the director,

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1 together with a nonrefundable application fee of one hundred
2 fifty dollars (\$150);

3 (2) submit to the director for his approval a
4 description, including floor plans, in a form prescribed by the
5 director, which shows the proposed licensed premises for which
6 the license application is submitted. The area represented by
7 the approved description shall become the licensed premises;

8 (3) if the applicant is a corporation, be
9 required to submit as part of its application the following:

10 (a) a certified copy of its articles of
11 incorporation or, if a foreign corporation, a certified copy of
12 its certificate of authority;

13 (b) the names and addresses of all
14 officers and directors and those stockholders owning ten percent
15 or more of the voting stock of the corporation and the amounts
16 of stock held by each stockholder; provided, however, a
17 corporation may not be licensed if an officer, manager, director
18 or holder of more than ten percent of the stock would not be
19 eligible to hold a license pursuant to the Liquor Control Act,
20 except that the provision of Subsection [B] D of Section 60-6B-1
21 NMSA 1978 shall not apply if the stock is listed with a national
22 securities exchange;

23 (c) the name of the resident agent of the
24 corporation authorized to accept service of process for all
25 purposes, including orders and notices of the director, which

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1 agent shall be approved by the director with respect to his
2 character;

3 (d) a duly executed power of attorney
4 authorizing the agent described in Subparagraph (c) of this
5 paragraph to exercise full authority, control and responsibility
6 for the conduct of all business and transactions of the
7 corporation within the state relative to the sale of alcoholic
8 beverages under authority of the license requested; and

9 (e) such additional information regarding
10 the corporation as the director may require to assure full
11 disclosure of the corporation's structure and financial
12 responsibility;

13 (4) if the applicant is a limited partnership,
14 submit as part of its application the following:

15 (a) a certified copy of its certificate
16 of limited partnership;

17 (b) the names and addresses of all
18 general partners and of all limited partners contributing ten
19 percent or more of the total value of contributions made to the
20 limited partnership or entitled to ten percent or more of the
21 profits earned or other income paid by the limited partnership.
22 No limited partnership shall receive a license if any partner
23 designated in this subsection would not be eligible to hold a
24 license issued pursuant to the Liquor Control Act; and

25 (c) such additional information regarding

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1 the limited partnership as the director may require to assure
2 full disclosure of the limited partnership's structure and
3 financial responsibility; and

4 (5) obtain approval for the issuance from the
5 governing body of the local option district in which the
6 proposed licensed premises are to be located in accordance with
7 the provisions of the Liquor Control Act.

8 B. Every applicant for a new license or for a
9 transfer of ownership of a license, if an individual or general
10 partnership, shall file with the application two complete sets
11 of fingerprints of each individual, taken under the supervision
12 of and certified to by an officer of the New Mexico state
13 police, a county sheriff or a municipal chief of police. If the
14 applicant is a corporation, it shall file two complete sets of
15 fingerprints for each stockholder holding ten percent or more of
16 the outstanding stock, principal officer, director and the agent
17 responsible for the operation of the licensed business. The
18 fingerprints shall be taken and certified to as provided for an
19 individual or partnership. If the applicant is a limited
20 partnership, it shall file two complete sets of fingerprints for
21 each general partner and for each limited partner contributing
22 ten percent or more of the total value of contributions made to
23 the limited partnership or entitled to ten percent or more of
24 the profits earned or other compensation by way of income paid
25 by the limited partnership. The fingerprints shall be taken and

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1 certified to as provided for an individual or partnership.

2 C. Upon submission of a sworn affidavit from each
3 person who is required to file fingerprints stating that the
4 person has not been convicted of a felony in any jurisdiction
5 and pending the results of background investigations, a
6 temporary license for ninety days may be issued. The temporary
7 license may be extended by the director for an additional ninety
8 days if the director determines there is not sufficient time to
9 complete the background investigation or obtain reviews of
10 fingerprints from appropriate agencies. A temporary license
11 shall be surrendered immediately upon order of the director.

12 D. An applicant who files a false affidavit shall be
13 denied a license. When the director determines a false
14 affidavit has been filed, he shall refer the matter to the
15 attorney general or district attorney for prosecution of
16 perjury.

17 E. If an applicant is not a resident of New Mexico,
18 fingerprints may be taken under supervision and certification of
19 comparable officers in the state of residence of the applicant.

20 F. Every applicant for a new license or a transfer
21 of ownership of a license shall file with the application two
22 current photographs of the applicant or, if the applicant is a
23 legal entity, two current photographs of the agent responsible
24 for operation of the licensed business for the applicant. The
25 director shall determine the size and type of photographs to be

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1 submitted. One photograph shall be affixed to the license and
2 the other shall be retained on file by the department.

3 [F-] G. Before issuing a license, the department
4 shall hold a public hearing within thirty days after receipt of
5 the application pursuant to Subsection [H] L of this section.

6 [G-] H. An application for transfer of ownership
7 shall be filed with the department no later than thirty days
8 after the date a person acquired an ownership interest in a
9 license; shall contain documentation of the actual purchase
10 price paid for the license, and the actual date of sale of the
11 license; and shall be accompanied by a sworn affidavit from the
12 owner of record of the license agreeing to the sale of the
13 license to the applicant as well as attesting to the accuracy of
14 the information required by this section to be filed with the
15 department. No license shall be transferred unless it will be
16 placed into operation in an actual location within one hundred
17 twenty days of issuance of the license, unless for good cause
18 shown the director grants an additional extension not to exceed
19 one hundred twenty days.

20 [H-] I. Whenever it appears to the director that
21 there will be more applications for new licenses than the
22 available number of new licenses during any time period, a
23 random selection method for the qualification, approval and
24 issuance of new licenses shall be provided by the director. The
25 random selection method shall allow each applicant an equal

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1 opportunity to obtain an available license, provided that all
2 dispenser's and retailer's licenses issued in any calendar year
3 shall be issued to residents of the state. For the purposes of
4 random selection, the director shall also set a reasonable
5 deadline by which applications for the available licenses shall
6 be filed. No person shall file more than one application for
7 each available license and no more than three applications per
8 calendar year.

9 [H.] J. After the deadline set in accordance with
10 Subsection [H] I of this section, no more than ten applications
11 per available license shall be selected at random for priority
12 of qualification and approval. Within thirty days after the
13 random selection for the ten priority positions for each
14 license, a hearing pursuant to Subsection [K] L of this section
15 shall be held to determine the qualifications of the applicant
16 having the highest priority for each available license. If
17 necessary, such a hearing shall be held on each selected
18 application by priority until a qualified applicant for each
19 available license is approved. Further random selections for
20 priority positions shall also be held pursuant to this section
21 as necessary.

22 [J.] K. All applications submitted for a license
23 shall expire upon the director's final approval of a qualified
24 applicant for that available license.

25 [K.] L. The director shall notify the applicant by

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1 certified mail of the date, time and place of the hearing. The
2 hearing shall be held in Santa Fe. The director may designate a
3 hearing officer to take evidence at the hearing. The director
4 or the hearing officer shall have the power to administer oaths.

5 [L-] M. In determining whether a license shall be
6 issued, the director shall take into consideration the
7 provisions of Section 60-6B-2.1 NMSA 1978 and all other
8 requirements of the Liquor Control Act. In the issuance of a
9 license, the director shall specifically consider the nature and
10 number of prior violations of the Liquor Control Act by the
11 applicant or of any citations issued within the prior five years
12 against a license held by the applicant or in which the
13 applicant had an ownership interest required to be disclosed
14 under the Liquor Control Act. The director shall disapprove the
15 issuance or give preliminary approval of the issuance of the
16 license based upon a review of all documentation submitted and
17 any investigation deemed necessary by the director.

18 [M-] N. Before any new license is issued for a
19 location, the director shall cause a notice of the application
20 therefor to be posted conspicuously, on a sign not smaller than
21 thirty inches by forty inches, on the outside of the front wall
22 or front entrance of the immediate premises for which the
23 license is sought or, if no building or improvements exist on
24 the premises, the notice shall be posted at the front entrance
25 of the immediate premises for which the license is sought, on a

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1 billboard not smaller than five feet by five feet. The contents
2 of the notice shall be in the form prescribed by the department,
3 and such posting shall be over a continuous period of twenty
4 days prior to preliminary approval of the license.

5 [N-] Q. No license shall be issued until the posting
6 requirements of Subsection [M] N of this section have been met.

7 [O-] P. All costs of publication and posting shall
8 be paid by the applicant.

9 [P-] Q. It is unlawful for any person to remove or
10 deface any notice posted in accordance with this section. Any
11 person convicted of a violation of this subsection shall be
12 punished by a fine of not more than three hundred dollars (\$300)
13 or by imprisonment in the county jail for not more than one
14 hundred twenty days or by both.

15 [Q-] R. Any person aggrieved by any decision made by
16 the director as to the approval or disapproval of the issuance
17 of a license may appeal to the district court of jurisdiction by
18 filing a petition in the court within thirty days from the date
19 of the decision of the director, and a hearing on the matter may
20 be held in the district court. If the disapproval is based upon
21 local option district disapproval pursuant to Subsection H of
22 Section 60-6B-4 NMSA 1978, the local option district shall be a
23 necessary party to any appeal. The decision of the director
24 shall continue in force, pending a reversal or modification by
25 the district court, unless otherwise ordered by the court. Any

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1 appeal from the decision of the district court to the supreme
2 court shall be permitted as in other cases of appeals from the
3 district court to the supreme court. "

4 Section 2. A new section of the Liquor Control Act,
5 Section 60-6B-2.1 NMSA 1978, is enacted to read:

6 "60-6B-2.1. [NEW MATERIAL] GROUNDS FOR REFUSAL TO ISSUE A
7 LICENSE. --The director may refuse to approve an application for
8 issuance of a new license or transfer of ownership of a license
9 under the Liquor Control Act if the director has reasonable
10 grounds to believe that:

11 A. the granting of the license is not demanded by
12 public interest or convenience;

13 B. the applicant:

14 (1) is in the habit of using alcoholic
15 beverages, habit-forming drugs or controlled substances to
16 excess;

17 (2) has made false statements to the director
18 or any employee of the department;

19 (3) is incompetent or physically unable to
20 carry on the management of the establishment proposed to be
21 licensed;

22 (4) has been convicted of a violation of an
23 alcoholic beverage law of this state or a political subdivision
24 of the state or has been convicted at any time of a felony;

25 (5) is not of good repute and moral character;

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1 (6) if previously licensed under the Liquor
2 Control Act, did not have a record of compliance with that act
3 or the regulations adopted pursuant to that act when licensed;

4 (7) is not the legitimate owner of the business
5 proposed to be licensed or has not disclosed any person who has
6 an ownership interest in the applicant's business that is
7 required to be disclosed; or

8 (8) cannot demonstrate financial responsibility
9 sufficient to adequately meet the requirements of the business
10 proposed to be licensed; or

11 C. there is a history of serious and persistent
12 problems involving disturbances, lewd or unlawful activities or
13 noise either on the premises proposed to be licensed or
14 involving patrons of the establishment in the immediate vicinity
15 of the premises if the activities in the immediate vicinity of
16 the premises are related to the sale or service of alcoholic
17 beverages by a person licensed under the Liquor Control Act.
18 Behavior that constitutes grounds for refusal of a license
19 pursuant to this subsection, where related to the sale or
20 service of alcoholic beverages, includes but is not limited to
21 obtrusive or excessive noise, music or sound vibrations; public
22 drunkenness; fights; altercations; harassment; unlawful drug
23 sales; litter related to or resulting from the consumption of
24 alcoholic beverages; trespassing on private property; and public
25 urination. A history of such behavior in or related to premises

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1 currently or previously operated by the applicant may be
2 considered when reasonable inference may be made that similar
3 activities will occur in or related to the premises proposed to
4 be licensed. "

5 Section 3. Section 60-6B-5 NMSA 1978 (being Laws 1981,
6 Chapter 39, Section 41) is amended to read:

7 "60-6B-5. EXPIRATION AND RENEWAL OF LICENSES. -- All
8 licenses provided for in the Liquor Control Act shall expire on
9 June 30 of each year and may be renewed from year to year under
10 the rules and regulations of the department, which shall include
11 a requirement that the licensee include with his license renewal
12 two current photographs of the licensee or, if the licensee is a
13 legal entity, two current photographs of the agent responsible
14 for operation of the licensed premises. The director shall
15 determine whether any of the licensees under his jurisdiction
16 are delinquent in any taxes administered by the taxation and
17 revenue department as of June 1 of each year. The director
18 shall also determine whether or not there exists any other
19 reason why a license should not be renewed. If the director
20 determines that the license should not be renewed, he shall
21 enter an order requiring the licensee, after notice, to show
22 cause why his license should be renewed, and he shall conduct a
23 hearing on the matter. If, after the hearing, the director finds
24 that the licensee is qualified, he shall renew the license. "

25 Section 4. Section 60-6C-1 NMSA 1978 (being Laws 1981,

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1 Chapter 39, Section 97, as amended) is amended to read:

2 "60-6C-1. GROUNDS FOR SUSPENSION, REVOCATION OR
3 ADMINISTRATIVE FINE--REPORTING REQUIREMENT. --

4 A. The director may suspend or revoke the license or
5 permit or fine the licensee in an amount not more than ten
6 thousand dollars (\$10,000), or both, when he finds that any
7 licensee [~~has~~]:

8 (1) has violated any provision of the Liquor
9 Control Act or any regulation or order promulgated pursuant to
10 that act;

11 (2) has been convicted of a felony pursuant to
12 the provisions of the Criminal Code, the Liquor Control Act or
13 federal law; [~~or~~]

14 (3) is in the habit of using alcoholic
15 beverages, habit-forming drugs or controlled substances to
16 excess;

17 (4) is insolvent, incompetent or physically
18 unable to carry on the management of the establishment that is
19 the licensed premises; or

20 [~~(3)~~] (5) has permitted his licensed premises to
21 remain a public nuisance in the neighborhood where it is located
22 after written notice from the director that investigation by the
23 department has revealed that the establishment is a public
24 nuisance in the neighborhood. The licensee's establishment
25 shall be considered a public nuisance if the director finds that

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1 there is a history of serious and persistent problems involving
2 disturbances, lewd or unlawful activities or noise either on the
3 licensed premises or involving patrons of the establishment in
4 the immediate vicinity of the licensed premises if the
5 activities in the immediate vicinity of the licensed premises
6 are related to the sale or consumption of alcoholic beverages on
7 the licensed premises. Behavior that constitutes a public
8 nuisance when related to the sale or consumption of alcoholic
9 beverages includes but is not limited to obtrusive or excessive
10 noise, music or sound vibrations; public drunkenness; fights;
11 altercations; harassment; unlawful drug sales; litter related to
12 or resulting from the consumption of alcoholic beverages;
13 trespassing on private property; and public urination.

14 B. The director shall suspend or revoke the license
15 or permit and may fine the licensee in an amount not to exceed
16 ten thousand dollars (\$10,000), or both, when he finds that any
17 licensee or:

18 (1) his employee or agent knowingly has sold,
19 served or given any alcoholic beverage to a minor in violation
20 of Section 60-7B-1 NMSA 1978 or to an intoxicated person in
21 violation of Section 60-7A-16 NMSA 1978, on two separate
22 occasions within any twelve-month period; or

23 (2) his agent has made any material false
24 statement or concealed any material facts in his application for
25 the license or permit granted him pursuant to the provisions of

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1 the Liquor Control Act.

2 C. In addition to other penalties provided in this
3 section, any retailer or dispenser who violates the provisions
4 of Section 60-7A-16 or 60-7B-1 NMSA 1978 by selling, serving or
5 delivering alcoholic beverages to an intoxicated person or a
6 minor through a drive-up window at a minimum shall have:

7 (1) upon a first violation of this subsection,
8 the privilege to sell alcoholic beverages or any other goods
9 from his drive-up window suspended by the director for a period
10 of two weeks;

11 (2) upon a second violation of this subsection,
12 the privilege to sell alcoholic beverages or any other goods
13 from his drive-up window suspended by the director for a period
14 of thirty days;

15 (3) upon a third violation of this subsection,
16 the privilege to sell alcoholic beverages or any other goods
17 from his drive-up window suspended by the director for a period
18 of sixty days; and

19 (4) upon a fourth violation of this subsection
20 within two years of any other violations of Section 60-7A-16 or
21 60-7B-1 NMSA 1978, the privilege to sell alcoholic beverages or
22 any other goods from his drive-up window revoked by the director
23 and the drive-up window permanently closed.

24 D. Any licensee aggrieved by a revocation,
25 suspension or fine proposed to be imposed by the director

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1 pursuant to this section shall be entitled to the hearing
2 procedures set forth in [~~Article 6C of~~] Chapter 60, Article 6C
3 NMSA 1978 before the revocation, suspension or fine shall be
4 effective.

5 E. Any charge filed against a licensee by the
6 department and the resulting disposition of the charge shall be
7 reported to the department of public safety and local law
8 enforcement agencies whose jurisdictions include the licensed
9 establishment. "

10 Section 5. A new section of the Liquor Control Act is
11 enacted to read:

12 "[NEW MATERIAL] DISPLAY OF LICENSE WITH CURRENT
13 PHOTOGRAPH. --It is a violation of the Liquor Control Act for a
14 licensee not to post in a conspicuous place on the licensed
15 premises his license that includes a current photograph of the
16 licensee or the licensee's agent who is responsible for
17 operation of the licensed premises. "